

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
Honolulu, Hawaii

Board of Land and Natural Resources
Department of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

FILE NO.: CDUA HA-3484
REF: OCCL: MC

Acceptance Date: September 17, 2008
180 Exp. Date: March 16, 2009

February 27, 2009

REGARDING: Single Family Residence

APPLICANT: LEE JOSEPH
PO Box 672, Kīlauea, HI 96754

AGENT: LORI MIKKELSON
All `Āina Services
PO Box 291
Laupāhoehoe, HI 96764

LOCATION: Laupāhoehoe, North Hilo, Hawaii

TMK: (3) 3-6-02:39

AREA OF PARCEL: 14,156 square feet

AREA OF USE: 3231 square feet

SUBZONE: Resource

DESCRIPTION OF AREA:

The proposed project area is located at Laupāhoehoe, North Hilo, Hawaii, TMK (3) 3-6-02:39. This 0.325-acre (14,156 square feet) property is located partially in the Resource Subzone of State Land Use Conservation District, and partially in the Agriculture District. **Exhibit 1** shows the subject area's location.

The parcel is near Laupāhoehoe State Park, and will be accessed by an existing gravel road known alternately as the Old Mill Road or the Old Branco Road. There are single family residences to the north of the parcel, and a state-owned parcel on the other side. The project area slopes gently, from 70 feet above sea level to 90 feet. It is bounded by approximately

100-foot bluffs. **Exhibit 2** shows an aerial view of the parcel.

The property itself is currently undeveloped; however, it was extensively disturbed in the past. The area has, at various times, hosted indigenous communities, plantations, and the Laupāahoehoe Sugar Company. There are no physical ruins on the property, and no known archaeological or historical features.

A botanical survey concluded that the parcel did not contain any significant endangered or threatened species. The parcel is mostly grassland, with small pockets of non-native trees. Feral pigs frequent the property.

The closest shoreline is a rocky beach across from the access road. Coastal vegetation includes ironwoods, hala, and coconut palms. The existing vegetation screens most of the project area from the view of park users on land and surfers and others in the water.

There are no known cultural or recreational activities that take place on the site.

PROPOSED PROJECT:

The applicants propose to build a 3231 square-foot single family residence. The single-story main residence will contain three bedrooms, two bathrooms, and a 669 square-foot lanai. A 576 square-foot two-car garage will be attached to the residence by a 73 square-foot covered walkway. The highest point of the residence is 23'8" above base, and the highest point of the garage is 14'6". The residence will be setback 160' from the front property line, 119' from the back, and 166' and 38' from either side.

The project involves 64 cubic yards of cut and fill. The grading will be limited to the driveway and the house and garage pad.

The house site itself is dominated by alien grasses and shrubland. The site plan calls for the removal of one single coconut palm. The applicant proposed to keep one acre of the property as grassland; this will be mowed and maintained in order to control for feral pigs and rodents.

The applicant is not planning any additional landscaping.

The site will be accessed by an existing gravel road.

Exhibit 3 shows the existing Access Road the the proposed house site. **Exhibit 4** shows the shoreline parcel that is across from the Access Road. **Exhibit 5** shows the Site Plan. **Exhibit 6** shows the Proposed Floor Plan. **Exhibits 7-9** show the exterior plans.

AGENCY AND PUBLIC COMMENTS:

The CDUA and Draft Environmental Assessment were referred for review and comment to the DLNR Division of Forestry and Wildlife, Land Division, Historic Preservation, State Parks, and DOCARE; Hawai'i County Planning Department; the Office of Hawaiian Affairs; the Office of Environmental Quality Control; and the Department of Health; the Sierra Club; and the Kanaka Council.

A copy of the CDUA and DEA were available for review at the Hilo Public Library.

The following written comments were received:

Sierra Club, Moku Loa Group

The Sierra Club wrote that they “see no problems with the project” and found the maps to be very useful.

County Of Hawai'i Planning Department

The Planning Department found that the proposal was exempt from needing a Special Management Area Permit on May 19, 2008. As the proposed residence will be set back 150 from the shoreline they did not feel that a Certified Shoreline would be needed.

DLNR Division of Forestry and Wildlife (DOFAW)

DOFAW had no comments

DLNR Land Division

Land Division had no comments

DLNR DOCARE

DOCARE had no comments

DLNR Historic Preservation Division (HPD)

HPD had previously visited the property and found no historic properties. They have no objections to the project providing that the current treeline is maintained, as this shields the project from the Tsunami Memorial. They are not concerned with the types of trees so much as the height.

Applicant's Response

The applicant's have no plans to remove the trees, and so the treeline will be maintained.

DLNR – Office of Conservation and Coastal Lands

OCCL noted that the final Environmental Assessment needed to contain a Cultural Impact assessment, as required by State law.

OCCL also noted that we would like to see a more detailed landscaping plan included in the final Environmental Assessment. The Botanical Survey listed a number of nuisance and invasive species on the property, and had suggestions for their replacement. OCCL noted that we were generally supportive of landowners in coastal areas who remove ironwoods and replace them with more suitable species such as hala, milo, hau, naupaka, and kou.

Applicant's Response

The applicant included a more detailed Cultural Impact Assessment in their final Environmental Assessment. The applicant has also chosen to do minimal landscaping.

Office of Hawaiian Affairs (OHA)¹

OHA is pleased to read that the applicant writes that they wish to have "as little impact on the land as possible." OHA seeks assurances that shoreline access will not be impacted or affected by this proposal.

OHA also suggests that outdoor lights should be shaded, and that every effort should be made to avoid lighting situations where lights project upwards or laterally. OHA notes that lights that directly illuminate the shore are prohibited by Statute. OHA suggests using amber colored lights to reduce the risk of seabird attraction.

OHA would also suggest that the project area be landscaped with drought tolerant indigenous species that are common to the area, and that any invasive species be removed.

ANALYSIS:

Following review and acceptance for processing, the applicant was notified, by letter dated September 19, 2008 that:

1. The SFR was an identified land use within the Conservation District, pursuant to Hawai'i Administrative Rules (HAR) §13-5-24 *Identified land uses in the resource subzone, R-8 Single Family Residence, (D-1)*; that this use required a permit from the DLNR; and that the final decision as to whether to grant or deny the permits lay with the Board of Land and Natural Resources (BLNR).
2. Pursuant to HAR §13-5-40 *Hearings*, no public hearing was required.
3. Pursuant to HAR §13-5-31 *Permit applications*, the permit required that an environmental assessment be carried out. A notice of the application was placed in the Office of Environmental Quality Control's *Environmental Notice* on September 23, 2008. OCCL issued a FONSI and noticed this in the January 8 2009 edition.

HAR §13-5-30 CRITERIA:

The following discussion evaluates the merits of the proposed land use by applying the criteria established in HAR §13-5-30.

- 1) *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

¹ OCCL received these comments after the Final Environmental Assessment had been prepared, and they were thus not included in that document. OCCL addresses these concerns in our Discussion and in our recommended conditions.

The proposed use is an identified land use in the Conservation District.

- 2) *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur.*

The objective of the Resource Subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas

Staff notes that the state has established residential standards for residences in the Conservation District that are designed to promote proper management of Conservation lands. This plan meets those standards.

- 3) *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable.*

The project complies with the policies and objectives of the Coastal Zone Management Program.

- 4) *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

Staff notes that the proposed project will not have any adverse impact to existing natural resources within the surrounding area, community or region, provided that adequate mitigation measures are implemented.

Staff notes that the proposed project will not detract from the rural character of the area.

- 5) *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

Staff is of the opinion the design of the proposed SFR will fit into the locality and surrounding areas, with the use of Best Management Practices and without significant or deleterious effects to the locality, surrounding area and parcel.

- 6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

The housing site appears to be situated in an area that will minimize the need for extensive grading and grubbing. The house is set back over 150 feet from the front and side, is moderate in size, and the existing treeline will be maintained; all this will help minimize the visual impact. No significant landscaping is being proposed, so open space will be maintained.

- 7) *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The proposed project does not involve subdivision of Conservation District land.

- 8) *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

The proposed action will not be materially detrimental to the public health, safety and welfare. Staff concurs with the applicant.

DISCUSSION:

The applicants propose to build a 3231 square foot single family residence. The single story building will contain three bedrooms, two bathrooms, a lanai, and a two-car garage attached to the residence by a covered walkway. The project involves 64 cubic yards of cut and fill.

The proposed residence is consistent with the HAR §13-5, Exhibit 4, *Single Family Residential Standards*.

The subject parcel is approximately 1000 feet from Laupāhoehoe State Park, and will be accessed by the gravel Old Mill Road, a.k.a. the Old Branco Road. There are residences to the north of the parcel. The closest shoreline is a rocky beach that is across the access road from the subject parcel.

Recreational uses of the Park and nearby shoreline area include picnicking, surfing, and 'opihi gathering. None of these activities take place on the subject parcel. Other parcels separate the subject parcel from the shoreline and from the State Park; the proposed residence should not have any impact on users of the shoreline, park, or ocean.

The parcel slopes gently, from 70 feet above sea level to 90 feet. The housing pad will be located on the flatter portion of the parcel, and grading will be minimal.

The parcel does not contain any significant endangered or threatened species.

The property itself is currently undeveloped; however, it has been extensively disturbed in the past. The house site is dominated by alien grasses and shrubland. The application received a few recommendations regarding landscaping, as follows:

- A botanical survey concluded that the presence of feral pigs makes the site unsuitable for large-scale indigenous ecosystem restoration. The report recommended that the applicant fence the property to keep the pigs out, remove ironwoods and other invasives, and replant with common native species such as hala, milo, kou, and naupaka.

- OHA also recommended removing the invasive species present on the parcel, and replanting with drought-tolerant native species.
- DLNR's Historic Preservation recommended maintaining the existing treeline, as it shielded the property from the Tsunami Memorial viewplain.

The applicant responded that they will use native species if they do any replanting, and will maintain the existing treeline, but they are not proposing any significant landscaping scheme. The applicant will keep one acre as grassland; this will be mowed in order to control for feral pigs and rodents.

As existing conditions will be maintained, OCCL is comfortable with this decision. **OCCL will recommend that maintaining the treeline be made a condition of the permit.**

OHA also suggested measures to minimize the potential impact of the residence on seabirds. **OCCL shares their concerns, and will recommend that a condition of the permit be that no artificial light from exterior lighting fixtures shall be directed toward the shoreline and ocean waters**

There are no known historical or archaeological features on the property.

OCCL finds the residence to be modest in scope and design, and in keeping with the rural character of the surrounding community.

Therefore, staff recommends the following:

RECOMMENDATION:

That the Board of Land and Natural Resources *APPROVE* CDUA HA-3484 for the proposed Joseph residence at Laupāhoehoe, North Hilo, Hawai'i, TMK (3) 3-6-02:39, subject to the following terms and conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, State and county governments, and the applicable parts of §13-5-42, HAR;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawai'i harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawai'i Administrative Rules (HAR), Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise

Control," and Chapter 11-54 National Pollutant Discharge Elimination System;

4. Before proceeding with any work authorized by the Board, the applicant shall submit four copies of the construction and landscaping plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
5. Any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been approved by the Department; further, all work and construction of the residence and infrastructure must be completed within three years of the approval.
6. The applicant shall notify the Office of Conservation and Coastal Lands in writing prior to the initiation, and upon completion, of the project;
7. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
8. The applicant will use Best Management Practices for the proposed project;
9. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
10. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
11. In the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease in the vicinity and the applicant shall immediately contact the State Historic Preservation Division;
12. The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
13. The single family dwelling shall not be used for rental or any other commercial purposes unless approved by the Board;
14. The applicant will contact OCCL for any permitting requirements should they change

the scope of the project;

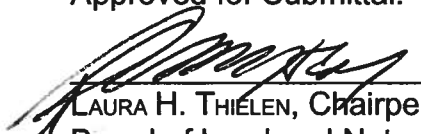
15. That the landscaping will not introduce any plants that have received a risk-factor score of 6 (High) or more from Pacific Islands Ecosystems at Risk project (see www.hear.org/Pier);
18. The applicants will maintain the existing tree line on their property that separates this property from the State Park;
20. Artificial light from exterior lighting fixtures, including, but not necessarily limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes shall be prohibited if the light directly illuminates, or is directed to project across property boundaries toward the shoreline and ocean waters, except as may be permitted pursuant to section 205A-71, HRS;
21. Other terms and conditions as may be prescribed by the Chairperson; and
22. That failure to comply with any of these conditions may render this Conservation District Use Permit null and void.

Respectfully Submitted,



Michael Cain
Staff Planner

Approved for Submittal:



LAURA H. THIELEN, Chairperson
Board of Land and Natural Resources

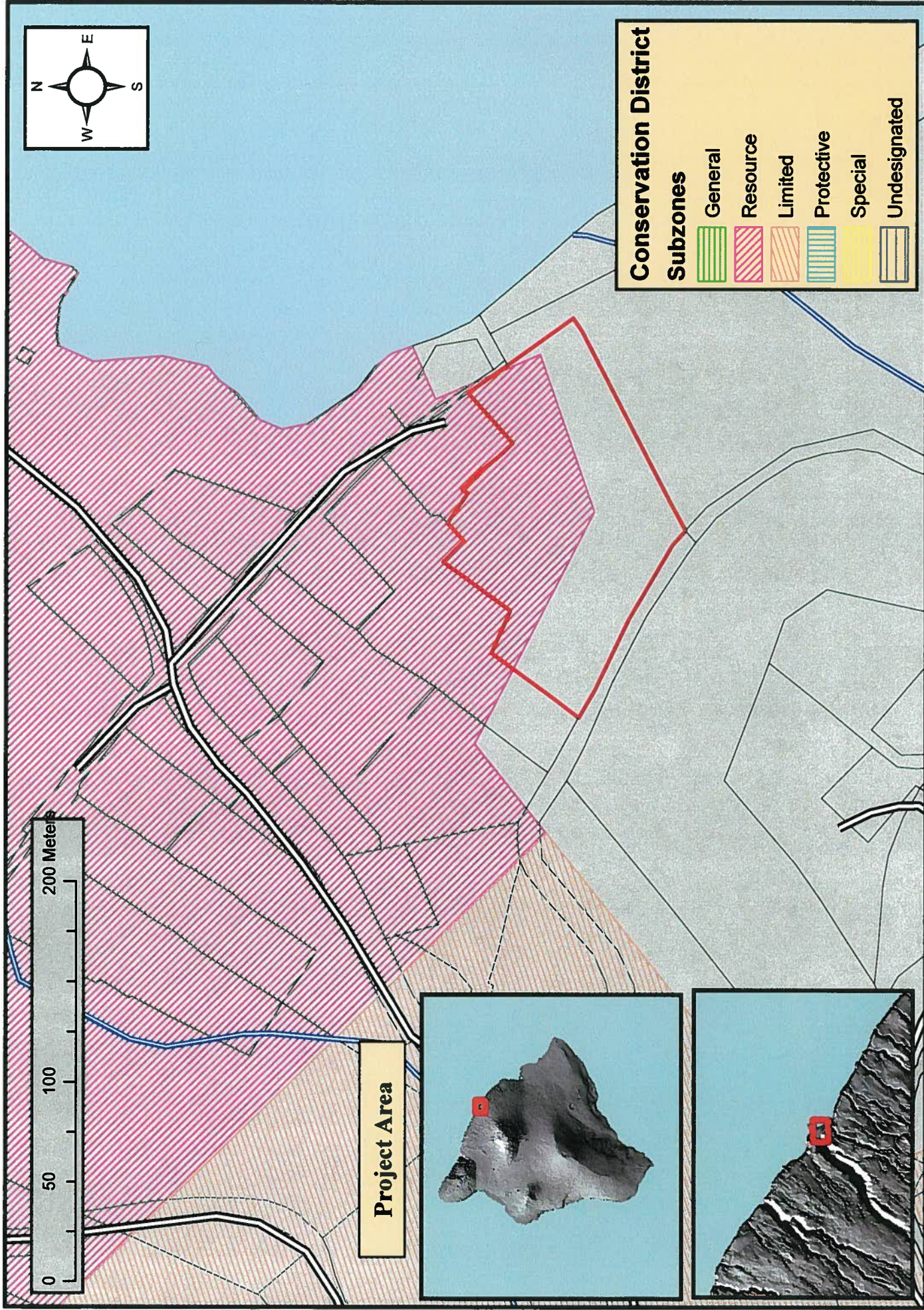




EXHIBIT 2



Photograph 1
View towards proposed house site



Photograph 2
Existing access road, that runs ocean side of Mr. Lee Joseph's



Photo from access road to ocean left, away from the Point

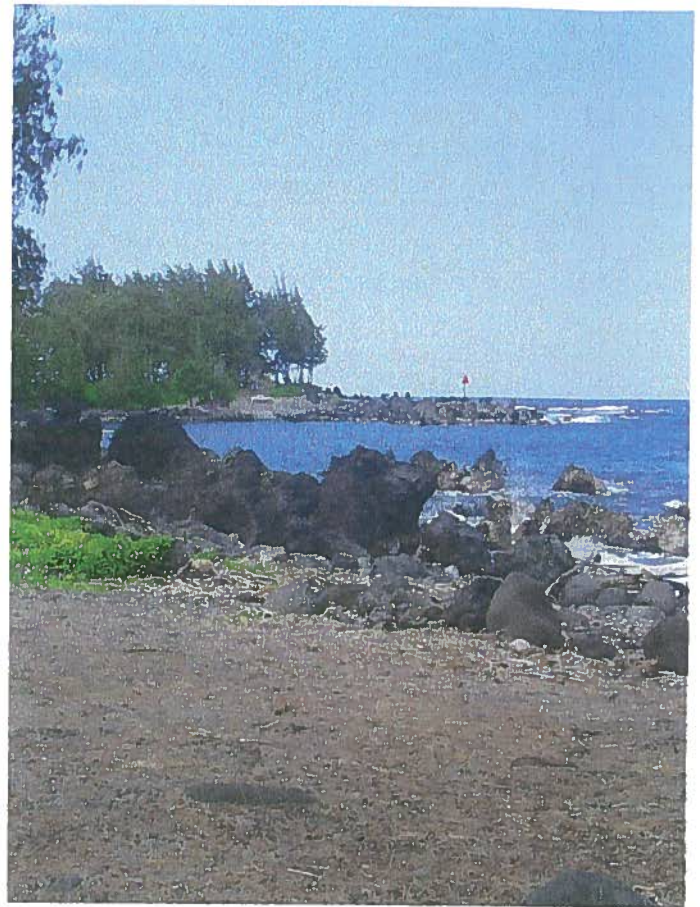


Photo from access road to looking towards the Point

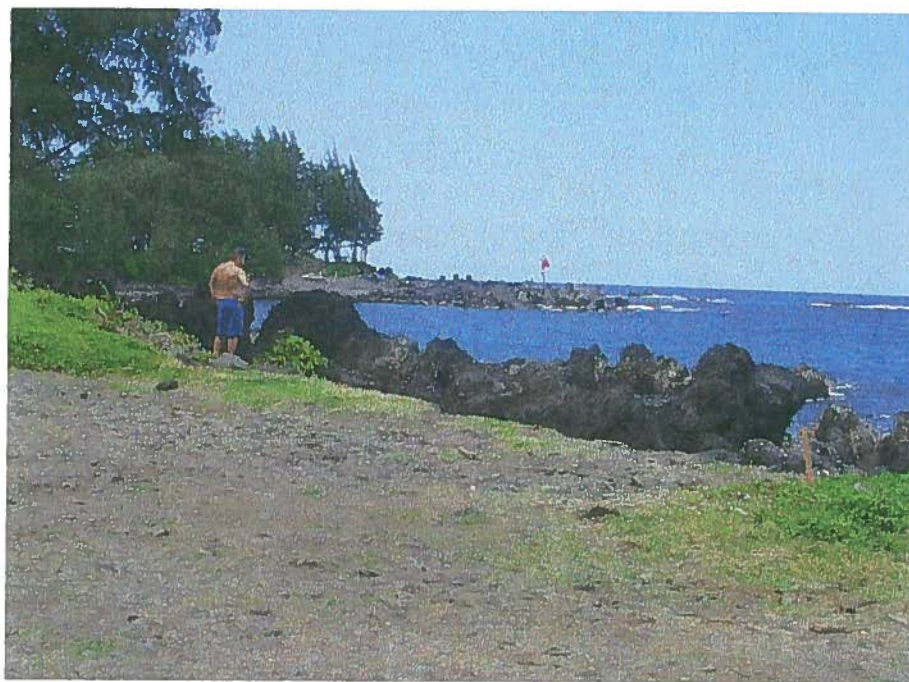


Photo from access road to neighboring property that runs to the ocean



**Joseph Single-Family
Residence
Proposed Plot Plan**



Figure 7
Joseph Single-Family
Residence
Floor Plan

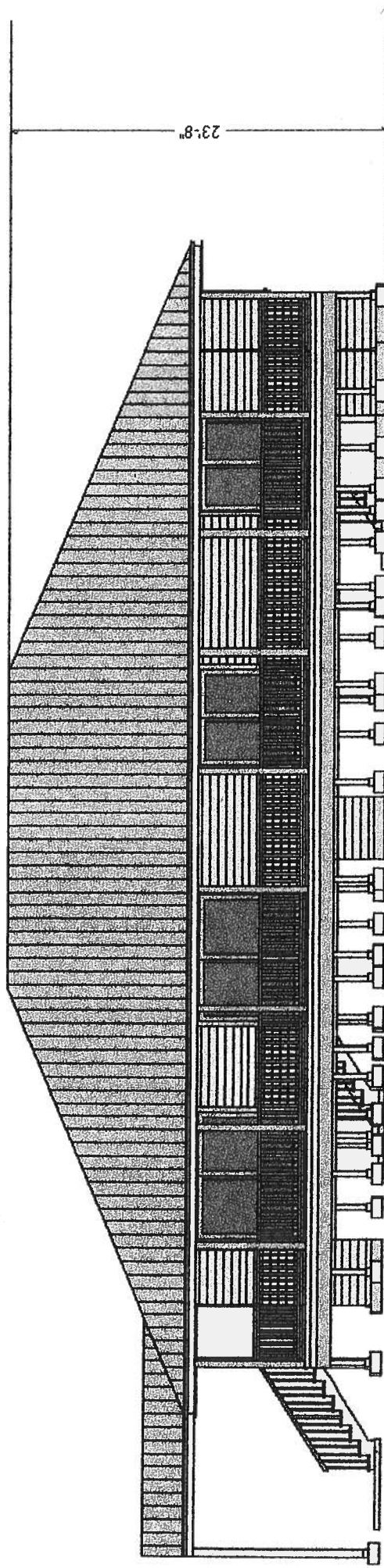


Figure 13
Joseph Single-Family
Residence
House Height

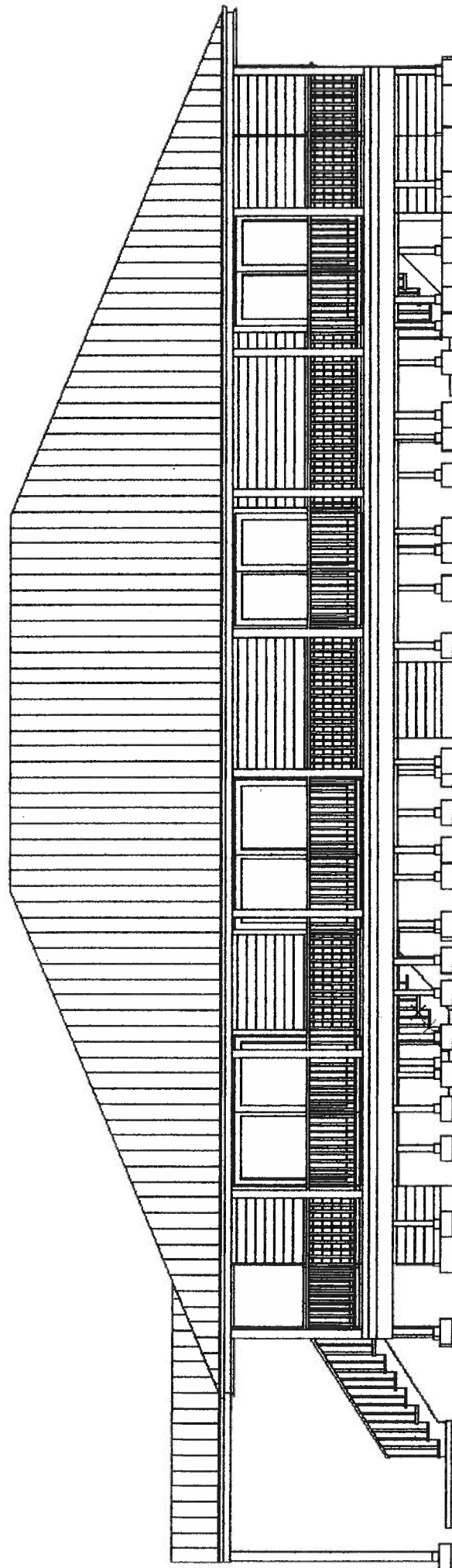


Figure 9

Joseph Single-Family
Residence
Front Elevation

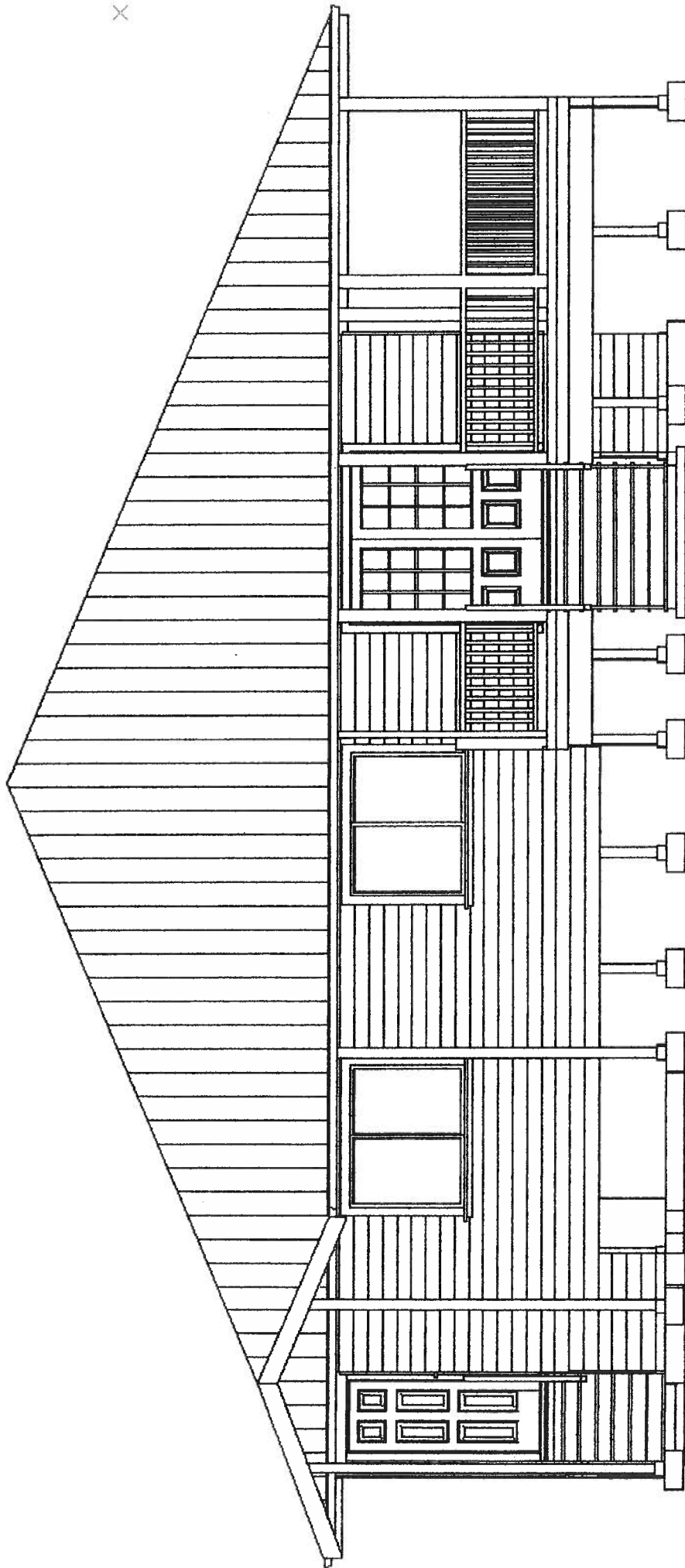


Figure 10

Joseph Single-Family
Residence
Left Elevation